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Keneth K. Cyr

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EXAMINER

DUNHAM, JASON B

ART UNIT

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3625

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/750,210	Applicant(s) CYR ET AL.	
	Examiner JASON B. DUNHAM	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-38 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant amended claims 1, 9-13, 15, 23, and 27 and canceled claim 8 in the response filed October 27, 2009 in reply to the office action dated July 27, 2009.

Applicant's amendments and remarks to independent claims 1, 15, and 27 overcome the previous 35 USC 101 rejections. Applicant's amendments to claim 12 overcome the previous 35 USC 112, second paragraph rejection for insufficient antecedent basis.

Claim Objections

Claim 9 is objected to because of the following informalities: claim 9 is dependent upon canceled claim 8. Appropriate correction is required. For purposes of examination claim 9 will be interpreted as depending upon independent claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 9-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBusk (US 5,682,728) hereafter know as DeBusk in view of DeBusk (US 2001/0016821) hereafter know as DeBusk 821.

Art Unit: 3625

Referring to claim 1. DeBusk discloses a computerized system having a processor and computer-executable instructions for automatically fulfilling orders for clinically related supplies embodied on one or more computer-storage media, comprising:

an interface to a supply chain engine, the supply chain engine automatically generating at least one order for clinically related supplies based upon supply consumption data derived from documentation of at least one clinical event, the supply consumption data including items used or consumed during the at least one clinical event, wherein the clinical event is carried out at a clinically related site having a plurality of clinical departments (DeBusk: column 5, lines 6-21 and column 6, lines 47-59). The examiner submits that DeBusk discloses generating orders based upon specific patient's needs in a clinical event such as surgery.

a fulfillment engine, communicating with the interface to the supply chain engine to receive the at least one order, the fulfillment engine, determining the clinically related supplies specified in the at least order are suitable for aggregation because the clinically related supplies are non-time sensitive, and without user intervention, accumulating a plurality of orders for the clinically related supplies for delivery from a vendor before triggering delivery of the clinically related supplies from the vendor, wherein the plurality of orders are received from more than one of the plurality of clinical departments (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies to the appropriate area (such as the OR) in order to

Art Unit: 3625

minimize cost and maintain proper inventory (e.g. non time-sensitive as opposed to a rush order for an impending procedure the next day).

DeBusk discloses all of the above but does not explicitly teach generating an order based upon real time supply consumption data generated while a clinical event is carried out. DeBusk 821 discloses a system for automatically fulfilling orders for clinically related supplies including generating an order based upon real time supply consumption data generated while a clinical event is carried out (DeBusk 821: abstract, figure 10, and paragraph 120). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the system of DeBusk to have included generating orders based on real time supply consumption data, as taught by DeBusk 821, in order to allow for tracking of resource consumption during a procedure for the purpose of inventory analysis (DeBusk 821: paragraph 128).

Referring to claim 2. The combination of DeBusk and DeBusk 821 further discloses a system wherein the clinically related site comprises a hospital facility (DeBusk: column 1, lines 13-39).

Referring to claim 3. The combination of DeBusk and DeBusk 821 further discloses a system wherein the supply consumption data includes clinically available quantities of surgical devices (DeBusk: column 1, lines 36-48, column 2, lines 29-40, and column 6, lines 47 - 59).

Referring to claim 4. The combination of DeBusk and DeBusk 821 further discloses a system wherein the supply chain engine generates the at least one clinical

Art Unit: 3625

supply order based upon at least one clinical quantity threshold (DeBusk: column 3, lines 25 – 50).

Referring to claim 5. The combination of DeBusk and DeBusk 821 further discloses a system wherein the at least one order for clinically related supplies comprises a purchase order (DeBusk: column 2, line 41 – column 3, line 24).

Referring to claims 6-7. The combination of DeBusk and DeBusk 821 further discloses a system wherein the supply consumption data includes supply codes captured in the clinically related site and are manually entered codes (DeBusk: column 3, lines 25-50).

Referring to claims 9 and 11. The combination of DeBusk and DeBusk 821 further discloses a system wherein the clinically related supplies are determined to be suitable for aggregation because the clinically related supplies are also categorized as non critical or as receiving a favorable purchase price when ordered in a batch (DeBusk: figure 3 and column 5, lines 50 – 67 and column 6, lines 1 - 25 disclosing combining supplies together and timing delivery based on a given care event and historical records relating to frequency of occurrence of a given care event in order to minimize cost in the supply chain).

Referring to claim 10. The combination of DeBusk and DeBusk 821 further discloses a system wherein the at least one order for clinically related supplies is associated with an individual patient supply record (DeBusk: column 6, lines 47-59).

Referring to claim 12. The combination of DeBusk and DeBusk 821 further discloses a system wherein the fulfillment engine triggers delivery of the at least one

Art Unit: 3625

order for clinically related supplies based upon at least one order for clinically related supplies and upon a set of rules, and where the set of rules comprising a set of selectors based upon patient condition information (DeBusk: column 4, lines 30-65).

Referring to claims 13-14. The combination of DeBusk and DeBusk 821 further discloses a system wherein the fulfillment engine is local or remote to the clinically related site (DeBusk: column 5, lines 6-21).

Referring to claim 15. The combination of DeBusk and DeBusk 821 disclose all of the above including generating an order based on real time supply data and further discloses a method for automatically fulfilling orders for clinically related supplies, comprising:

tracking, at a computing device, a clinical supply inventory at a clinically related site (DeBusk: abstract);

generating a pick ticket including a selection of clinically related supplies for a clinical event (DeBusk: column 6, lines 47 - 59 disclosing a selection of supplies for a specific patient's treatment);

retrieving the clinically related supplies from storage (DeBusk: column 5, lines 22 - 50);

consuming the clinically related supplies during the clinical event and updating a patient supply record in real time to generate real time supply consumption data indicating the clinically related supplies that were consumed in the clinical event (DeBusk: 821: paragraph 120);

Art Unit: 3625

automatically generating at least one order for the clinically related supplies based on the real time supply consumption data derived from documentation of the clinical event generated while the clinical event is carried out, the supply consumption data including items used or consumed during the at least one clinical event at the clinically related site (DeBusk 821: abstract, figure 10, and paragraph 120);

determining that a favorable purchase price for at least one of the clinical related supplies may be derived by aggregating orders for the at least one of the clinical related supplies (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies in order to minimize cost and maintain proper inventory)

determining that the at least one of the clinical related supplies is non-time sensitive (DeBusk: column 6, lines 1-25 disclosing a hospital more controlling it's inventory for future usage (e.g. non time-sensitive as opposed to a rush order for an impending procedure the next day));

upon said determining that the favorable purchase price may be derived and the at least one of the clinical related supplies is non-time sensitive, without human invention, accumulating additional orders for the at least one of the clinical related supplies prior to triggering delivery (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies in order to minimize cost and maintain proper inventory); and

triggering delivery of the at least one of the clinically related supplies after accumulating multiple orders for the at least one of the clinically related supplies

Art Unit: 3625

(DeBusk: column 6, lines 26 – 46 disclosing pre-processing of orders by suppliers in order to have materials for multiple orders ready for delivery).

Referring to claims 16-21. Method claims 16-21 are rejected under the same rationale set forth above in the rejection of systems claims 2-7 containing similar limitations.

Referring to claim 22. The combination of DeBusk and DeBusk 821 further discloses a method, wherein the at least one order comprises a plurality of orders, further comprising a step of aggregating the orders for clinically related supplies for delivery from a single vendor (DeBusk: figure 2 disclosing multiple manufacturers supplying a single distributor).

Referring to claim 23. The combination of DeBusk and DeBusk 821 further discloses a method wherein the orders for clinically related supplies are accumulated for a plurality of clinical departments within the clinically related site (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies to the appropriate area)

Referring to claims 24-38. Method claims 24-38 are rejected under the same rationale set forth above in the rejection of systems claims 1-14 and method claims 15 and 22-23 containing similar limitations.

Response to Arguments

Applicant's arguments filed October 27, 2009 regarding the above 35 USC 103(a) rejection in view of the combination of DeBusk and DeBusk have been fully considered but they are not persuasive.

Applicant argues on page 15 of the remarks that the combination of DeBusk and DeBusk does not disclose aggregating clinically related supplies that are non-time sensitive before triggering delivery from a vendor. The examiner respectfully disagrees. Paragraph 40 of the PG Pub of applicant's disclosure teaches aggregating supplies that are non-time sensitive upon reaching a low reserve quantity or other triggering criteria. Similarly, column 6, lines 1 - 46 disclose monitoring inventory levels of a hospital and alerting manufacturers and distributors to have materials ready for multiple orders.

Applicant further argues that the prior art of record does not disclose determining supplies without human intervention. The examiner disagrees because DeBusk discloses generation of a bill of materials used to determine the supplies required for a bundle. The examiner agrees that DeBusk does require user intervention in recording the use of specific supplies during a patient procedure, however the plurality of orders are aggregated before delivery through the generation of the bill of materials (see at least column 5, line 51 – column 6, line 46. This is analogous to applicant's disclosure in figure 9 and paragraph 46 of the PG Pub requiring manual entry or data scan by a user of the supplies that were consumed during a procedure. Applicant indicates in their remarks that DeBusk '821 does disclose real time supply consumption data which is used to procure supplies for future use, however argues that this data is not used to

Art Unit: 3625

generate an order. The examiner disagrees because generating an order for supplies is not distinct from procuring supplies for future use. Furthermore, claim 1 recites basing the orders upon real time supply consumption data (as admitted to be disclosed by DeBusk '821), and then waiting to request delivery from a vendor until a plurality of orders have been accumulated which is not distinct from determining supplies that will be required at some point in the future as disclosed by the combination DeBusk and DeBusk '821.

Dependent claims 2-7 and 9-14 remain rejected under the same rationale set forth above regarding the rejection of independent claim 1.

Applicant further argues that the combination of references fails to describe “upon said determining that the favorable purchase price may be derived and the at least one of the clinical related supplies is non-time sensitive, without human intervention, accumulating additional orders for the at least one of the clinical related supplies prior to triggering delivery” as recited in independent claim 15. The examiner respectfully disagrees for the reasons states above for maintaining the rejection of claim 1 containing similar limitations and also because DeBusk '821 discloses a hospital minimizing costs of supplies by aggregating supplies together prior to delivery to minimize shipping costs (e.g. a more favorable price).

Independent claim 27 and dependent claims 16 -26 and 28-38 remain rejected under the same rationale set forth above regarding the rejection of independent claims 1 and 15.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON B. DUNHAM whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason B Dunham/
Primary Examiner, Art Unit 3625